

PA. BRIEF 1484-6662

# DISCOURSE

Of the Harmony

# UNION

OF THE

# KINGDOMS

OF

SCOTLAND and ENGLAND,

WITH

Certain ARTICLES concerning the same.

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Dedicated to Her **MAJESTY.**

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By the Right Honourable Sir *Francis Bacon*, Kt. Baron of *Verulam*, Viscount of *St. Alban*, and Lord High Chancellor of *England*.

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A

Brief

# DISCOURSE OF THE UNION

Of the Kingdoms

OF

SCOTLAND and ENGLAND

Containing in Ten Internal Points  
thereanent as follows.

1. Several *Parliaments*.
  2. Several *Councils of Estate*.
  3. Several *Officers of the Crown*.
  4. Several *Nobilities*.
  5. Several *Laws*.
  6. Several *Courts of Justice*.
  7. Several *Receipts & Payments*.
  8. Several *Admiralties & Marine Forces*.
  9. Several *Freedoms and Liberties*.
  10. Several *Taxes*.
- In these Points of

toward Union there will intervene o n  
 principal Difficulty and Impediment grow-  
 ing from that Root which Aristotle in his  
 Politics maketh to be the Root of all Di-  
 vision and Dissension in Common Wealths,  
 and that is Equality and Inequality. For  
 the Realm of Scotland is now an ancient  
 and noble Realm, substantive of it self. But  
 when that Island shall be made Britain, then  
 Scotland is no more to be considered as  
 Scotland, but as a part of Britain; No more  
 than England is to be considered as Eng-  
 land, but as a part likewise of Britain, and  
 consequently neither of these are to be con-  
 sidered as things entire of themselves, but  
 in the proportion they bear to the whole.  
 And therefore let us imagine (*Nam id mente  
 fessum, quod a se non possumus*) that Bri-  
 tain had never been divided, but had ever  
 been one Kingdom, then that part of Soil  
 or Territory, which is comprehended un-  
 der the Name of Scotland, is in quantity  
 (as I heard it esteemed, how truly I know  
 not) not past a third part of Britain, and  
 that part of Soil or Territory which is com-  
 prehended under the Name of England, is  
 two parts of Britain, leaving to speak of  
 any Difference of Wealth or Population at



speaking onlie of *Quantitie*. So then if  
for Example *Scotland* should bring to Par-  
liaments much *Nobilitie* as *England* then a  
third part shou'd contervail two parts; Nam  
*si inequalibus equalia addes omnia erunt in-*  
*equalia*. And this I protest before God  
and your Majesty, I do speak not as a man  
born in *England*, but as a man born in  
*Britain*. And therefore to descend to the  
Particulars.

For the *Parliament*, the Consideration  
of that Point will fall into four *Questions*.

1. The first, what portion shal be kept  
between the *Votes of England*: and the  
*Votes of Scotland*.

2. The Second touching the manner of  
*Proposition* or *possessing* of the *Parliament*  
of *Causes* there to be handled; which in  
*England* is used to be done immediatlie  
by anie *Member of Parliament*, or by the  
*Prolocutor*, and in *Scotland* is used to be  
done immediatlie by the *Lords of Articles*  
whereof the one Form seemeth to have more  
*Liberty*, and the other more *Gravitie* and  
*Maturitie*, and therefore the Question wil  
be, whether of these shall yield to other, or  
whether there should not be a Mixture of  
both; by some *Commissions* precedent to  
everie



every Parliament in the nature of Lords of the Articles, and yet not excluding the liberty of propounding in full Parliament afterwards.

3. The third, touching the Orders of Parliament, how they may be compounded and the best of either taken

4. The Fourth, how those which by Inheritance or otherwise, have Offices of Honour and Ceremony in both the Parliaments, as the Lord Steward with us, &c. May be satisfied and Duplicitie accommodated.

For the Councils of Estate in both Kingdoms stand divided. It should seem necessarie to continue several Councils, but if your Majesty should proceed to a strict Union, then howsoever Your Majesty may establish some Provincial Councils in Scotland as there is here of York and in the Marches of Wales, yet the question will be, whether it will not be more convenient for Your Majesty, to have but one Privy Council about your Person, whereof the Principal Officers of the Crown of Scotland to be for Dignity sake, howsoever their abiding and remaining may be as your Majesty shall imploy their Service. but this Point

Point belongeth meerlie and whollie to Your Majesty's Royal Will and Pleasure.

For the Officers of the Crown, the Consideration thereof wil fall into these Questions.

First in regard of the Latitude of your Kingdom and the distance of Place, whether it will not be Matter of necessity to continue the severall Officers, because of the Impossibility for the service to be performed by one.

The Second admitting the duplicity of Officers should be contained yet whether there should not be a difference that one should be the Principal Officer, and the other to be but special and subaltern. As for Example one to be Chancellor of Britain, and the other to be Chancellor with some special addition, as here of the Duchy, &c.

The third, if no such speciality or inferiority be thought fit then whether both Officers should not have the Title and the Name of the whole Island and P<sup>ar</sup>ts: As the Lord Chancellor of England to be Lord Chancellor of Britain; and the Lord Chancellor of Scotland, to be Lord Chancellor of Britain; but with severall Provisoos that they shall not intromit themselves, but with.

within their several Precincts.

For the *Nobilities*, the consideration thereof will fall into these *Questions*.

The First of their *Votes in Parliament* (which was touched before) what proportion they shall bear to the *Nobility of England*; wherein if the proportion which shall be thought fit be not full yet, your Majesty may out of your *Prerogative* supply it for although you cannot make fewer of *Scotland*, yet you may make more of *England*.

The second is touching the *Place and Precedence*, wherein to marshal them according to the *Precedence of England* in your *Stile*, and according to the *Nobility of Ireland*, that is, all *English Earls First*, and then *Scottish* will be thought unequal for *Scotland*, To marshal them according to *Antiquity*, will be thought unequal for *England*. Because I hear the *Nobility* is generallie more ancient. And therefore the question will be, whether the indifferent way were not to take them *interchangeably*, as for Example, first the ancient *Earl of England*, and then the ancient *Earl of Scotland*; and so *Alternis Vicibus*.

For the *Laws* to make an intire and per-



fect Union, it is a matter of great difficulty and length, both in the Collecting of them and in the passing of them. For first, as to the Collecting of them, there must be made by the Lawyers of either Nation, a Digest under Titles of their several Laws and Customs, as well Common Laws, as statutes, that they may be Collated and compared and that the diversities may appear be discerned of. And for the passing of them we see by experience that *Patrimony* is dear to all Men, and that Men are bred and nourished up in the Love of it, and therefore how harsh Changes and Innovations are. And we see likewise what Disputation and Argument the Alteration of some Law doth cause to bring forth how much more the alteration of the whole Corps of the Laws? Therefore the first Question will be, whether it be not good to proceed by parts, and to take that, that is most necessary, and leave the rest to Time? The parts therefore, or Subject of Law, are for this purpose best distributed according to that ordinarie Division of Criminal and Civil, and those of Criminal Causes, into Capital and Penal.

The second Question therefore is, allowing

ing the general *Union* of *Laws* to be too great a *Work* to embrace, whether it were not convenient that *Cases Capital* were the same in both *Nations*, I say, the *Cases*, I do not speak of the *Proceedings* or *Tryals*, that is to say, whether the same *Offences* were not fit to be made *Treason* or *Felony* in both *Places*?

The third *Question* is, Whether *Cases Penal*, though not *Capital*, yet if they concern the *Publick State*, or otherwise the *Discipline of Manners*, were not fit likewise to be brought into one *Degree*, as the *Case of Mespriſion of Treason*, as the *Case of Preaminire*, the *Case of Fugitives*, the *Case of Incest*, the *Case of Simony*, and the rest.

But the *Question* that is more urgent than anie of these is, whether these *Cases*, at the least be they of anie higher or inferior degree, wherein the *Fact* committed, or *Act done in Scotland*, may prejudice the *State* and *Subjects of England* or *converso*, are not to be reduced into one *Uniformity* of *Law* and *Punishment*, as for Example, a *Perjurie* committed in a *Court of Justices in Scotland*, cannot be prejudicial in *England*, because *Depositions* taken in *Scotland* cannot be produced and used

used here in *England*. But a *Forgery* of a *Deed* in *Scotland*, I mean with a false *Date* of *England*, may be used and given in Evidence in *England*. So likewise the depopulating of a *Town* in *Scotland*, doth not directlie prejudice the *State* of *England*: But if an *English Merchant* shall carrie *Silver* and *Gold* into *Scotland* (as he may) and thence *Transport* it into *Foreign* parts, this prejudice the *State* of *England*, and may be an *Evadion* to all the *Laws* of *England*, ordained in that *Case*: And therefore had need to be bridled with as severe a *Law* in *Scotland*, as is here in *England*.

Of this kind there are manie *Laws*.

The *Law* of the 50.<sup>th</sup> of *Rich.* the 2.<sup>d</sup> of going over without *License*, if there be not the like *Law* in *Scotland* will be frustrated and evaded: For anie *Subject* of *England* may go first into *Scotland*, and thence into *Foreign* parts.

So the *Laws* Prohibiting *Transportation* of sundrie *Commodities*, as *Gold*, *Silver*, *Ordinance*, *Artillery*, *Corn*, &c. If there be not a *Correspondence* of *Laws* in *Scotland* will in the like manner be delud-  
ed.



ed and frustrate: For anie *English Merchant* or *Subject* may carrie such *Commodities* first into *Scotland*, as well as he may carrie them from *Port* to *Port* in *England*. And out of *Scotland*, into *Foreign Parts*, without anie peril of *Law*

So *Libels* may be devised and written in *Scotland*, and published and scattered in *England*.

*Treasons* may be Plotted in *Scotland* and Executed in *England*.

And so in manie other *Cases*, if there be not the like severitie of *Laws* in *Scotland*, to restrain *Offences*, that there is in *England*; (Whereof we are here ignorant whether there be or no) it will be a gap or stop even for *English Subjects* to escape and avoid the *Laws of England*.

But for *Treasons* the best is that by the Statute of 26. K. H. the 8. Cap. 13. any *Treason* committed in *Scotland*, may be proceeded with in *England* as well as *Treasons* committed in *France*, *Rome*, or elsewhere,

For *Courts of Justice*, *Tryels Process*, and other *Administration of Laws*, to make anie *Alteration* in either *Nation*, it will be a thing so new and unwonted to either

People; That it may be doubted it will make the *Administration of Justice* (which of all other things ought to be known, and certain as the beaten way) to become intricate and uncertain: And besides, I do not see that the severallie of *Administration of Justice*, though it be by Court Sovereign of last resort; (mean without Appeal or Error) is any Impediment at all to the Union of a Kingdom, as we see by experience in the severall Courts of Parliament in the Kingdom of France: And I have been always of Opinion, that the Subjects of England do already fetch Justice somewhat far off, more than in anie Nation that I know, the largeness of the Kingdom considered, though it be holden in some part by the Circuits of the Judges: And the two Councils at York, and the Marches of Wales established.

But it may be Question, whether as *Commune Vinculum*, of the Justice of both Nations, your Majesty should not erect some Court about your Person, in the nature of of Grand Council of France: To which Court you might by way of Evocation draw Causes from the ordinarie Judges of both Nations; For so doth the French King

King from all the Courts of *Parliament* in *France*; manie of which are more remote from *Paris* than anie part of *Scotland* is from *London*.

For *Receipts* and *Finances*, I see no Question will arise, in regard it will be matter of Necessity to establish in *Scotland* a Receipt of *Treasure*, for *Payments*, and *Erogations* to be made in those Parts: And for the *Treasure of Spare*, in either *Receipts*, the *Custodeis* thereof may well be several considering by Your Majesties Commandment, they may at all times be removed or disposed according to Your Majesties Occasions.

For the *Patrimonies* of both *Crowns*, I see no Question will arise, except Your Majesty would be pleased to make one compounded *Annexation*, for an inseparable *Patrimony* to the *Crown* out of the *Lands* of both *Nations*. And so the like for the *Principality* of *Britain*, and for other *Appenages* of the rest of your Children erecting likewise such *Dutchys* and *Honours* compounded of the Possessions of both *Nations* as shall be thought fit.

For *Admiralty* or *Navy*, I see no great Question will arise: For I see no Inconvenience



venience for Your Majesty to continue Shipping in Scotland. And for the Jurisdictions of the Admiralties, and the Profits and Casualties of them, they will be respective unto the Coasts, over against which the Seas ly and are situated, as it is here with the Admiralties of England.

And for Merchandising, it may be a Question, whether that the Companies of the Merchant Adventurers, of the Turkey Merchants, and the Muscovy Merchants ( if they shall be continued ) should not be compounded of Merchants of both Nations, English and Scottish. For to leave Trade free in the one Nation, and to have it restrained in the other, may percase breed some Inconvenience.

For Freedoms and Liberties, the Charters of both Nations may be revived: And of such Liberties as are agreeable and convenient for the Subjects and People of both Nations, one Great Charter may be made and confirmed to the Subjects of Britain and those Liberties which are peculiar or proper to either Nation, to stand in State as they do.

But for Imposts and Customs, it will be

great Question how to accommodat them  
and reconcile them. For, if they be much  
better in *Scotland* than they be here in *En-  
gland* (which is a thing I know not) then  
this Inconvenience will follow, That the  
Merchants of *England* may unlade in the  
Ports of *Scotland*, and this Kingdom to  
be served from thence, and Your Maje-  
sties Customs abated.

And for the Question, whether the  
Scottish Merchants should pay Strangers  
Custom in *England*, that resteth upon the  
Point of *Naturalization*, which I touched  
before.

Thus have I made Your Majesty a brief  
and naked Memorial of Articles and Points  
of this great Cause, which may serve on-  
ly to excite and stir up Your Majesties Roy-  
al Judgment, and the Judgment of Wiser  
Men, whom you will be pleased to call  
to it; Wherein I will not presume to per-  
swade or dissuade any thing; Nor to in-  
terpose mine own Opinion, but do expect  
light from your Majesties Royal Directi-  
ons, unto the which I shall ever submit  
my Judgment, and apply my Travail:  
And

( 56 )  
And I most humbly pray your Majesty  
in this which is done, to pardon my Er-  
rours, and to cover them with my good  
Intention and Meaning, and Desire I have  
to do your Majesty Service, and to acquit  
the Trust that was reposed in me, and  
chiefly in your Majesties benign and gra-  
cious Acceptation.

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F I N I S.

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